No. _____

OCTOBER TERM, 2019

IN THE SUPREME COURT OF THE UNITED STATES

ANTHONY K. ANDERSON, Petitioner,

v.

BRIAN WILLIAMS, WARDEN; ATTORNEY GENERAL FOR THE STATE OF NEVADA, Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

RENE L. VALLADARES
Federal Public Defender of Nevada
JASON F. CARR
Counsel of Record
Assistant Federal Public Defender
411 E. Bonneville, Ste. 250
Las Vegas, Nevada 89101
(702) 388-6577
(702) 388-6419 (Fax)
Jason_Carr@fd.org

Counsel for Petitioner **Anderson**

Petitioner Anthony K. Anderson asks for leave to file the attached petition for writ of certiorari without prepayment of costs and to proceed in forma pauperis. Petitioner has been granted leave to so proceed in the federal district court for the District of Nevada and in the United States Court of Appeals for the Ninth Circuit. Counsel for Anderson was appointed by the United States District Court for the District of Nevada under 18 U.S.C. § 3599(a)(2). Granting leave to proceed in forma pauperis is authorized by Supreme Court Rule 39.1.

Dated this 4th Day of March 2019.

Respectfully submitted,

Rene Valladares
Federal Public Defender of Nevada

/s/ ***Jason F. Carr***

JASON F. CARR
Counsel of Record
Assistant Federal Public Defender
411 E. Bonneville Ave., Ste. 250
Las Vegas, Nevada 89101
(702) 388-6577
Jason_Carr@fd.org

Counsel for Petitioner **Anderson**

No. _____

OCTOBER TERM, 2019

IN THE SUPREME COURT OF THE UNITED STATES

ANTHONY K. ANDERSON, Petitioner,

v.

BRIAN WILLIAMS, WARDEN; ATORNEY GENERAL FOR THE STATE OF NEVADA, Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

RENE L. VALLADARES
Federal Public Defender of Nevada
JASON F. CARR
Counsel of Record
Assistant Federal Public Defender
411 E. Bonneville, Ste. 250
Las Vegas, Nevada 89101
(702) 388-6577
(702) 388-6419 (Fax)
Jason_Carr@fd.org

Counsel for Petitioner **Anderson**

QUESTIONS PRESENTED

Whether a Federal District Court Unfairly Precluded pro se Prisoner Litigant Anthony Anderson's Future Ability to a Federal Habeas Review of his Nevada Convictions When the District Court Ruled Upon a Protective Petition on the Merits and Without Briefing with the Knowledge that Anderson was Still Exhausting his Post-Conviction Claims in Nevada Courts?

LIST OF PARTIES

There are no parties to the proceeding other than those listed in the caption.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases **Page(s)**

Federal Statutes and Rules

Nevada Statutes and Rules

OPINIONS BELOW

On December 16, 2016, the United States District Court for the District of Nevada filed a written order dismissing Petitioner Anderson's 28 U.S.C. § 2254 petition for writ of habeas corpus. (*See* Appendix (App.) C, 4-23; *see also* App. B (accompanying civil judgment).) The United States Court of Appeals for the Ninth Circuit filed an unpublished memorandum denying Anderson's appeal of that decision on December 3, 2018. (*See* App. A, 1-4.) Both decisions are unpublished.

JURISDICTION

The United States Court of Appeals for the Ninth Circuit filed its unpublished memorandum and order denying Anderson' federal post-conviction appeal on December 3, 2019. (*See* App. A, 1-4.) Anderson mails and electronically files this petition within ninety days of the entry of that order; given March , 2019, was Washington's Birthday. *See* Sup. Ct. R. 13(1); *see also* Sup. Ct. R. 30(1) (excluding the last day of the period if it falls on a federal holiday). Accordingly, this Court has jurisdiction pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The requirements for filing a successive petition containing previously unadjudicated claims are statutory and read as follows:

> (b)(1) A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.
>
> (2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless—
>
> (A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
>
> (B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

> (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.
>
> (3)(A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.
>
> (B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.
>
> (C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

28 U.S.C. § 2244(b) (2018).

This petition implicates Title 28 U.S.C. § 2254, which states in pertinent part:

> The Supreme Court . . . shall entertain an application for writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

The statute's exhaustion provision reads:

> (b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that
> --
> (A) the applicant has exhausted the remedies available in the courts of the State; or
>
> (B)(i) there is an absence of available State corrective process; or
>
> (ii) circumstances exist that render such process ineffective to protect the rights of the applicant.
>
> (2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

> (3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

The standards and requirements for acquiring relief from a state court conviction in federal court is set forth in 28 U.S.C. § 2254(d):

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

STATEMENT OF THE CASE

A. Nevada Criminal Charges and Anderson's Guilty Plea

On November 1, 2010, in a justice court in the Eighth Judicial District of Nevada, Las Vegas, Nevada, Anderson pleaded not guilty to an amended complaint containing two counts of Lewdness with a Child Under the Age of 14 (felony charges under Nevada Revised Statute 201.230) four counts of Child Abuse and Neglect (felony charges under Nevada Revised Statute 200.508). (*See* United States District Court Order dismissing petition, Appendix (App.) E, 15-16 (summarizing the case's history).)[1] Previously, a Clark County Justice Court had released Anderson on bond and house arrest. The district court allowed that release status to continue. Anderson never violated the terms of his pre-trial release.

On May 23, 2011, the DA filed an amended information, per plea negotiations, amending the charges to two counts of Child Abuse and Neglect with Substantial Mental Injury, violations of Nevada Revised Statutes 200.508. On that same day, Anderson pleaded guilty to the amended charges.

On October 13, 2011, Anderson filed a motion to withdraw his plea. The court held a hearing on the motion on February 16, 2012. The court denied the motion in a written order the court filed on February 29, 2012.

The trial court sentenced Anderson on February 29, 2012. After hearing a victim impact statement from Anderson's ex-wife, the court, following the recommendation of Nevada Parole and Probation's presentence report, the court sentenced Anderson to two consecutive terms of three to twelve (3-12) years. (*See* App. F, 18-19 (Nevada Judgment of Conviction).)

---

[1] "App. E, 15-16" refers to the consecutively stamped pages on the attached Appendix. .

B. Post-Sentencing Proceedings and Petitioner's Three Rounds of Federal Habeas Litigation

Anderson filed motions in the state district court, in May and June of 2012, moving to amend the March 14, 2012 judgment of conviction. Anderson sought an additional 432 days of presentence credit. The court denied the motions following May 21, 2012 and June 18, 2012, hearings. The court filed a written order denying presentence credit on June 26, 2012, and entered that order on July 27, 2012.

Anderson appealed that denial. On April 9, 2013, the Nevada Supreme Court denied that appeal.

Concurrently, Anderson filed a state post-conviction petition on July 19, 2012. This petition did not the presentence credits claim. The state district court denied relief and Anderson filed a notice of appeal on November 26, 2012.

1. The First Federal Petition

While Anderson's post-conviction denial appeal was pending before the Nevada Supreme Court, on or about April 16, 2013, Anderson filed a federal habeas petition in District of Nevada under No. 2:13-cv-076-APG-VCF. That petition presented only one ground for relief which challenged the denial of 432 days of presentence credit. (*See* App. C, 6-9 (district court's procedural summary).) The initial petition was timely in that only ninety-six days had elapsed from the federal one-year filing statute of limitations. (*See id.* at 7 & n.6.) Anderson's protective petition contained the only habeas claim that was, at that time, exhausted.

The lower court denied that petition, on its merits, within weeks of its filing. (*See* App. E 15-17 (dated May 15, 2013).) The court, though aware that Anderson's state post-conviction denial was still on appeal, did not warn Anderson that he faced the possibility of losing the right to litigate any future claims or otherwise allow Anderson to stay his federal petition pending exhaustion.

The district court denied Anderson a certificate of appealability (COA). On August 30, 2015, in CA No. 13-16232, after reviewing Anderson's pro se brief, the United States Court of Appeals for the Ninth Circuit also denied Anderson a COA. (*See* App. D.)

2. The Second Federal Habeas Petition

Thereafter, on September 18, 2013, the Supreme Court of Nevada issued an order on Anderson's post-conviction appeal affirming and reversing in part. That court remanded for an evidentiary hearing on the claim that trial counsel failed to timely file a notice of appeal from Anderson's judgment of conviction. On remand, the state district court granted Anderson an out-of-time appeal pursuant to Nevada Rule of Appellate Procedure 4(c).

On or about January 12, 2015, while Anderson's direct appeal was still pending, Anderson mailed his second federal habeas petition to a District of Nevada federal court.

That court docketed the matter as No. 2:15-cv.-00184-JAD-CWH. On October 26, 2015, the court dismissed the petition without prejudice as premature due to the still-pending state court appeal. On February 17, 2016, the Ninth Circuit affirmed that ruling in CA No. 15-17263 with the caveat its ruling "does not preclude [Anderson] from filing a new section 2254 petition within an applicable statute of limitations period, once his conviction is final and he has exhausted his state court remedies." (*See* App. C, 8 & n.3.)

Meanwhile, on November 19, 2015, the then newly created Nevada Court of Appeals affirmed Anderson's convictions. Anderson then filed a second state post-conviction petition on December 7, 2015. A state district court denied that petition on March 22, 2016. The Nevada Court of Appeals affirmed on August 16, 2016. (*See* App. C, 6-7.)

3. The Third Habeas Petition

On or about September 13, 2016, Anderson mailed the original petition in this matter to the District of Nevada clerk for filing. The clerk received the petition on September 19, 2016. There is no question that this petition is timely. The issue is whether it is successive.

The federal district court identified a potential successive petition problem and issued an order to show cause as to why the court should not dismiss the petition on that ground.

After receiving Anderson's pro per materials, the court entered an order finding Anderson's petition successive. (*See* App. C.) The Order notes that Anderson did not seek permission from this Court to file a successive petition as required under 28 U.S.C. § 2244(b)(3).

The court believed the instant petition was successive because it had dismissed Anderson's first federal habeas petition, in District Court No. 2:13-cv-0716, on the merits. The court did not focus on Anderson's second federal habeas petition in 2:15-cv. 0184, where a different district court and the Ninth Circuit, dismissed that action as premature with a specific allowance to refile at the conclusion of state court proceedings. The order dispenses with the potential significance of those proceedings and orders in a footnote. (*See* App. C, 8 & n.3.)

The lower court's focus was on exhaustion correctly recognizing that the successive petition question does not turn on whether a second petition contains grounds that were not exhausted in the first. The court, however, did not consider the possibility that Anderson's first habeas petition was a protective petition. The Supreme Court encourages the filing of protective petitions when timeliness may be at issue as set forth in *Pace v. DiGuglielmo*, 544 U.S. 408, 418-19 (2005).

It is true that the court noted Anderson should not have been concerned about time because he filed his state court petitions in a timely fashion and those

proceedings were still pending. (*See* App C., 9.) The lower court believed sanctioning premature filings of federal petitions would lead to "piecemeal litigation." (*Id.*) The court did not consider the protective petition stay and abeyance procedures outlined in *Pace* and *Rhines v. Weber*, 544 U.S. 269 (2005). At no time did the court afford Anderson the right to stay his federal petition pending exhaustion and then amend the petition accordingly or to suffer a dismissal without prejudice.[2]

Pace does require that a petitioner have some reasonable confusion about whether a petition may have a timing problem. That confusion existed here. The state court record establishes that trial counsel deprived him of his direct appeal by failing to file a timely notice of appeal. Nor is it apparent that Anderson's litigation of his presentence credit issue tolled the federal statute of limitations under 28 U.S.C. § 2244(d)(2). There is enough confusion in this record to justify Anderson filing a protective petition to ensure he had no federal timing issues once he had completed state court proceedings.

C. The Ninth Circuit's Decision

The Ninth Circuit relied on the realization that federal district courts are not required to counsel habeas petitioners about the consequences of a ruling on the merits of a petition. (*See* App. A, 3 (citing Pliler v. Ford, 452 U.S. 225, 331 (2004).) Nor can Anderson receive equitable belief because the district court did not, per se, make a mistake. (*See id.* (citing *Castro v. United States*, 540 U.S. 375, 377 (2003).)

The Ninth Circuit failed to appreciate that Anderson is only facing a successive petition problem because a federal district court erred in ruling on the merits of

[2] The fact that Anderson's first federal petition contained the only claim exhausted at that time supports the contention the pleading should have been treated as a protective petition. Until that clarified the issue in *Mena v. Long*, 813 F.3d 907 (9th Cir. 2016), it was unknown whether a court had the authority to stay a fully unexhausted petition.

Anderson's protective petition without following the procedures set forth in in this Court decisions in *Pace v. DiGuglielmo*, 544 U.S. 408, 418-19 (2005) and *Rhines v. Weber*, 544 U.S. 269 (2005).

To correct this error and to allow for a merits review of Anderson's now fully exhausted ineffective assistance of counsel claims, this Petition follows.

REASONS FOR GRANTING THE PETITION

THIS HONORABLE COURT SHOULD GRANT THE WRIT IN ORDER TO VACATE THE NINTH CIRCUIT'S DECISION AND CLARIFY THAT PRO SE PRISONERS ARE ENCOURAGED TO USE THE PROTECTIVE PETITION MECHANISM SANCTIONED BY THIS COURT IN *PACE V. DIGUGLIELMO*.

This is the case of the habeas litigant who was too industrious. Normally diligence is a positive attribute for a prisoner litigant. For instance, under 28 U.S.C. § 2254(e)(2), a petitioner is barred from developing further factual information in federal court absent a showing of due diligence. *See Williams (John) v. Taylor*, 529 U.S. 420, 437-40 (2000); *see also Ramirez v. Yates*, 571 F.3d 993, 997 (9th Cir. 2009) (setting forth the diligence requirement for establishing equitable tolling).) In this case, however, Anderson is in danger of losing the ability to have his federal claims heard because he was too diligent.

A federal district court caused this damage by dismissing Anderson's first federal petition, within weeks of its filing and without briefing or warning, on the merits and with prejudice. The court knew that Anderson was still litigating claims in state court. The court also knew, or should have known, that ruling on the sole claim in Anderson's petition would forever bar him from litigating the claims he was then in the process of exhausting.

The lower court puts Anderson at fault for filing his protective petition and thereby taking this chance. (*See* ER App C, 6-7 (stressing Anderson's perilous election).) This is inappropriate. As a pro se litigant Anderson is not charged with the same legal knowledge as to potential pitfalls as a counseled habeas petitioner. Pleadings filed by pro se litigants "however inartfully pleaded" are held to "less stringent standards than formal pleadings drafted by lawyers." *Hughs v. Rowe*, 449 U.S. 5, 9 (1980). Further, while a trial court has no obligation to act as an inmate's paralegal, the court does have a duty to not take actions without notice that unduly prejudice that litigant.

This case is controlled by this Court precedent which establishes the care and notice a court owes pro se litigants. *Castro v. United States*, 540 U.S. 375 (2003), held that a federal district court cannot *sua sponte* re-characterize a pro se litigant's motion as a § 2255 motion unless it informs the litigant of the consequences of that re-characterization. That action could cause prejudice to a litigant as it would bar a future 2255 filing. Notice provides the litigant an opportunity to contest the reformulation or withdraw or amend the motion. *See Castro*, 540 U.S., at 377-81. Because of this risk courts are required to inform the prisoner of the proposed action and give the litigant a chance to contest the court's action or move to dismiss the motion. *See id.* at 382.

Contrast this with *Pliler v. Ford*, 542 U.S. 225 (2004), which held that courts are not required to advise litigants of stay and abeyance procedures or potential

future timeliness problems before dismissing a mixed petition under *Rose v. Lundy*, 455 U.S. 509 (2004).

Anderson asserts that his case is controlled by *Castro*. The problem recognized in that case is the potential for a prisoner to lose the ability to litigate habeas claims due to unilateral court action. *Pliler* differs because it concerns more complicated legal determinations such as exhaustion and computing Antiterrorism and Effective Death Penalty Act (AEDPA) statute of limitations timelines; not a trivial undertaking to be sure.[3]

A. Litigants are Encouraged to File Protective Petitions

Recognizing the inequities that could result when a petition is dismissed because of exhaustion problem *Rhines v. Weber*, 544 U.S. 269 (2005), approved of a stay and abeyance procedure to address the problematic interplay between the *Rose v. Lundy* total exhaustion principle and AEDPA's one-year statute of limitations. This Court provided that district courts, "rather than dismiss the mixed petition pursuant to *Lundy*, might stay the petition and hold it in abeyance while the petitioner returns to state court to exhaust his previously unexhausted claims." *Rhines*, 544 U.S. at 275.

One month after the issuance of *Rhines*, the Court provided a specific example of a circumstance that would constitute good cause— "a petitioner's reasonable confusion about whether a state court filing would be timely." *Pace v. DiGuglielmo,* 544 U.S. at 415-16. *Pace* found that a mere "reasonable confusion" about filing

---

[3] AEDPA requires that petitioner "must file a federal petition within one year from 'the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.'" *Lott v. Mueller*, 304 F.3d 918, 920 (9th Cir. 2002) (quoting 28 U.S.C. § 2244(d)(1)(A)).

requirements ordinarily will constitute "good cause." *Pace* encourages petitioners worried about time issues to file a protective petition and then move for a stay under *Rhines* thereby eliminating the possibility that of AEDPA time running out and the litigant forever losing the right to file a federal petition.[4]

Anderson had cause to be apprehensive about timing issues. First, because trial counsel failed to file a timely notice of appeal from his Nevada conviction, the date of finality for AEDPA purposes began once the thirty-day time period for filing a notice of appeal ran out. *See* Nev. R. App. P. 4. While it turns out that Anderson need not have worried, the situation would have been different if a Nevada court had ruled his state post-conviction was not "properly filed." Anderson should not be penalized for having acted out of an abundance of caution.

1. The District Court Should have Warned Anderson of the Consequences of Ruling on his Single Issue First Petition on the Merits

There is tension in the law regarding what duties a federal district court owes federal litigants. In *Castro v. United States*, 540 U.S. 375 (2003), the Court cautioned lower courts that, no matter how good the intentions, relabeling a motion as a federal habeas petition should not be done without appraising the pro se litigant of the potential consequences. Castro found that, without the warning, a pro se litigant will be left without sufficient information to even make a reasoned objection. *See Castro*, 540 U.S. at 384.

[4] In fact, the Nevada Attorney General has argued many times that a habeas petitioner did not act diligently because they failed to file a protective petition to safeguard their federal rights.

Castro limited lower courts' re-characterization discretion in the following way:

> the district court must notify the pro se litigant that it intends to re-characterize the pleading, warn the litigant that this re-characterization means that any subsequent § 2255 motion will be subject to the restrictions on "second or successive" motions, and provide the litigant an opportunity to withdraw the motion or to amend it so that it contains all the § 2255 claims he believes he has. If the court fails to do so, the motion cannot be considered to have become a § 2255 motion for purposes of applying to later motions the law's "second or successive" restrictions.

540 U.S. at 383.

A year later the Court explained there are limits to how much advice a lower court must give even pro se litigants. "District judges have no obligation to act as counsel or paralegal to pro se litigants." *Pliler v. Ford*, 542 U.S. 225, 231 (2004). Courts are not required to explain the details of federal habeas procedure or calculates statutes of limitations. *Id.* These are tasks normally and properly performed by trained counsel as a matter of course. Requiring district courts to advise a pro se litigant in such a manner would undermine district judges' role as impartial decision-makers. *Id.*

The instant case stands between these two precedents. On the one hand, *Castro* took issue with affirmative district court actions that potentially deprived a litigant from filing a future habeas petition. *Pace*, however, was concerned with forcing courts to take on tasks traditionally performed by lawyer advocates. The court declined to task district judges with "the potentially burdensome, time-consuming, and fact-intensive task of making a case-specific investigation and calculation of whether the AEDPA limitations period has already run or will have run by the time the petitioner returns to federal court." *Pliler*, 542 U.S. at 232.

Anderson submits this case hews closer to the reasoning and holding of *Castro*. The lower court need not have engaged in any legal analysis besides recognizing that

its actions were foreclosing any further habeas filings. The court was aware that Anderson was actively litigating his post-conviction claims in state court. It is reasonable to posit that Anderson would not wish to be precluded from litigating those claims in federal court.

The burden on the court is not large. It need only have served Anderson with notice of its intention to rule on his sole claim and the consequences of that action. The court should have asked Anderson whether he would prefer a ruling or stay. In fact, a stay would not have been necessary. Had the court simply dismissed the petition without prejudice to refile, which is exactly what a different federal district court did to Anderson's second habeas petition, this Court would not be saddled adjudicating this appeal.

The lower court should have served Anderson with notice and allowed for Anderson to make an election. This same procedure is followed in federal courts everyday where pro se petitioners are given an election between abandoning unexhausted claims or suffering a *Rose v. Lundy* dismissal of the petition.

A court reviewing a habeas petition should adhere to "a tradition in which courts of equity have sought to 'relieve hardships which, from time to time, arise from a hard and fast adherence' to more absolute legal rules, which, if strictly applied, threaten the 'evils of archaic rigidity.'" *Holland v. Florida*, 560 U.S. 631, 650 (2010) (quoting *Hazel–Atlas Glass Co. v. Hartford–Empire Co.*, 322 U.S. 238, 248 (1944), *disapproved of on other grounds by Standard Oil Co. of Cal. v. United States*, 429 U.S. 17, 18 & n.2 (1976)). Undue hardship is present here. By callously sabotaging Anderson's ability to have his claims heard because of his "election" to file a protective petition, Anderson faces the prejudice that flows from the "evils of archaic rigidity." The law counsels that pro se litigants should not be treated so harshly.

CONCLUSION

For the aforementioned reasons, and in the interests of justice and fair play, the Petitioner Donald Glenn Anderson respectfully requests that the Court grant this Petition for a Writ of Certiorari, reverse the decision of the court of appeals for the Ninth Circuit, and enter a decision clarifying that pro se prisoners worried about federal timing should be encouraged to, not harshly punished for, filing a protective petition.

DATED this 4th Day of March 2019.

Respectfully submitted,

Rene Valladares
Federal Public Defender of Nevada

/s/ Jason F. Carr

JASON F. CARR
Counsel of Record
Assistant Federal Public Defender
411 E. Bonneville, Ste. 250
Las Vegas, Nevada 89101
(702) 388-6577
Jason_Carr@fd.org

Counsel for Petitioner **Anderson**

II. CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the document contains words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 4th day of March 2019.

Respectfully submitted,

/s/ Jason F. Carr

JASON F. CARR
ASST. FED. P. DEFENDER

CERTIFICATE OF SERVICE

I hereby declare that on the 4th day of March 2019, I served this Petition for Writ of Certiorari, including the appendix, on the State of Nevada by depositing an envelope containing the petition in the United States mail, with first-class postage prepaid, addressed as follows:

Respectfully submitted,

Rene Valladares
Federal Public Defender of Nevada

/s/ Jason F. Carr

JASON F. CARR
Counsel of Record
Assistant Federal Public Defender
411 E. Bonneville, Ste. 250
Las Vegas, Nevada 89101
(702) 388-6577
Jason_Carr@fd.org

Counsel for Petitioner **Anderson**

INDEX TO APPENDIX

FILED

DEC 3 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANTHONY K. ANDERSON, Petitioner-Appellant, v. BRIAN WILLIAMS, Warden and ATTORNEY GENERAL FOR THE STATE OF NEVADA, Respondents-Appellees.	No. 17-15265 D.C. No. 2:16-cv-02215-APG-PAL MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Andrew P. Gordon, District Judge, Presiding

ANTHONY K. ANDERSON, Petitioner, v. JO GENTRY, Warden, Respondent.	No. 17-70203 ORDER

Application for Leave to File Second or Successive Petition

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Argued and Submitted October 19, 2018
San Francisco, California

Before: WALLACE, KLEINFELD, and GRABER, Circuit Judges.

The district court dismissed Nevada state prisoner Anthony Anderson's petition for a writ of habeas corpus as successive. Anderson appealed that dismissal and filed an original application for leave to file a successive claim. We consolidated the proceedings and have jurisdiction under 28 U.S.C. § 2253 and 28 U.S.C. § 2244. We affirm the district court in the appeal; we deny the application.

We consider the appeal first. Anderson's opening brief raised two issues: (1) whether the district court erred by dismissing his third habeas petition as "second or successive" under the Antiterrorism and Effective Death Penalty Act of 1996; and (2) whether we affirmatively misled Anderson into believing that his third petition would be considered on the merits. But in his reply brief and at oral argument, Anderson pursued a new theory of relief: that his first petition was not a petition for a writ of habeas corpus at all. Anderson asserts that, because his first *pro se* filing was not a habeas petition, his third petition cannot have been successive.

Anderson did not distinctively raise this argument in his opening brief, so it is waived or forfeited. *Koerner v. Grigas*, 328 F.3d 1039, 1048 (9th Cir. 2003). We may exercise discretion to consider the argument because it was discussed in the answering brief. *See id.* But, even were we to do so, it would not change the

outcome because Anderson's first petition was a habeas petition. It was formally labeled as such both on the typed form Anderson used and in his handwritten addition, and in substance it challenged the validity of Anderson's conviction.

The arguments that Anderson did raise in his opening brief fail on the merits. First, district courts are not required to counsel habeas petitioners about the consequences of a ruling on the merits of their petitions. *See Pliler v. Ford*, 542 U.S. 225, 231 (2004) ("District judges have no obligation to act as counsel or paralegal to *pro se* litigants"). The district court that considered Anderson's first petition thus did not err such that the first petition would not count as a habeas petition for purposes of the "second or successive" bar. *Cf. Castro v. United States*, 540 U.S. 375, 377 (2003) ("[A] recharacterized motion will not count as a § 2255 motion for purposes of applying § 2255's 'second or successive' provision"). To the extent that Anderson now seeks relief because his first petition should have been dismissed as mixed, Anderson "cannot evade the rules governing successive petitions by seeking to relitigate the earlier dismissal." *Henderson v. Lampert*, 396 F.3d 1049, 1054 (9th Cir. 2005).

Second, equitable relief for a judicial mistake is available only when a mistake has actually been made. *See Ford v. Pliler*, 590 F.3d 782, 788 (9th Cir. 2009) ("In order to show that he was affirmatively misled, Ford needed to point to some inaccuracy in the district court's instructions"). Here, there was no mistake.

We did not state that Anderson definitely *could* bring a third habeas petition when we denied a certificate of appealability for the dismissal of his second petition. We stated only that our denial "d[id] not preclude him" from filing another petition. That was correct; the 2015 denial did not prevent Anderson from bringing another petition. We therefore affirm the district court in the appeal.

In the application, we may authorize a successive petition only if Anderson makes a prima facie showing that he could not have discovered the factual predicate of his claims earlier, and that the new facts show that no reasonable factfinder would have found him guilty of the underlying offense but for constitutional error. 28 U.S.C. § 2244(b)(2)(B), (b)(3)(C). Anderson's application fails in both respects. He does not point to any new evidence that "could not have been discovered previously," nor does he point to any new facts that show his conviction could not have occurred but for constitutional error. We therefore deny the application.

The district court's judgment in appeal 17-15265 is **AFFIRMED.** Application 17-70203 is **DENIED.**

APP. 005

AO 450 (Rev. 5/85) Judgment in a Civil Case

UNITED STATES DISTRICT COURT

***** DISTRICT OF NEVADA

ANTHONY K. ANDERSON,

Petitioner,

v.

BRIAN WILLIAMS, et al.,

Respondent(s).

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2:16-cv-02215-APG-PAL**

__ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

__ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

_X_ **Decision by Court.** This action came to be considered before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that this action is dismissed without prejudice for lack of jurisdiction as a successive petition.

IT IS FURTHER ORDERED that a certificate of appealability is denied.

December 19, 2016

LANCE S. WILSON
Clerk

/s/ K. Rusin
Deputy Clerk

APP. 006

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ANTHONY K. ANDERSON,

Petitioner,

vs.

BRIAN WILLIAMS, *et al.*,

Respondents.

Case No. 2:16-cv-02215-APG-PAL

ORDER

This habeas action by a Nevada state inmate comes before the Court on a *sua sponte* inquiry as to whether the petition should be dismissed as a successive petition. This order follows upon the Court's earlier show-cause order and petitioner's response thereto. ECF Nos. 10 & 11.

Background

Petitioner Anthony Anderson seeks to challenge his March 14, 2012, Nevada state conviction in No. C268406 in the state district court, pursuant to a guilty plea, of two counts of child abuse and neglect with substantial mental injury. He was sentenced to two consecutive terms of 36 to 144 months. He received five days credit for time served.

The Court adopts herein the full recital of the state and federal procedural history from the prior order, which is unchallenged by petitioner, as if set forth herein *in extenso*. See ECF No. 10, at 1-5.

Petitioner previously pursued a federal habeas petition in this Court in No. 2:13-cv-00716-APG-VCF. At the time that petitioner filed the prior federal petition, his appeal from the denial of state post-conviction relief still was pending in the Supreme Court of Nevada. At that time, no more than 96 days – at a maximum – had elapsed in the federal one-year limitation period. No state or federal procedural

requirement at that time prevented Anderson from waiting for the conclusion of all pending state proceedings and then presenting all of his claims for relief at that time in a single federal habeas petition. See ECF No. 10, at 2-3; see also *id.*, at 7 n.12.

The petition in No. 2:13-cv-00716 presented only a single ground for relief, which challenged the denial of additional presentence credit. The petition did not – otherwise – challenge the validity or duration of petitioner's confinement under the conviction and sentence pursuant to the March 14, 2012, judgment of conviction in No. C268406. However, the petition quite clearly challenged *the failure of the judgment itself* to provide an additional 432 days of presentence credit. That is, petitioner was not challenging a subsequent failure of an administrative body to properly calculate and/or provide presentence credit under the terms of the judgment. Rather, he maintained that he was entitled to federal habeas relief because the state district court had provided for only five days presentence credit in the judgment itself without also providing an additional 432 days of presentence credit in the judgment. He thus challenged the duration of his confinement under the terms of the judgment, maintaining that the portion of the judgment providing only five days presentence credit should be overturned on federal habeas review.

On May 15, 2013, this Court denied the petition in No. 2:13-cv-00716 on the merits. The Court held that even if Nevada *arguendo* otherwise had created a constitutionally protected liberty interest in credit for time served, that liberty interest did not extend to time spent on house arrest given the governing Nevada statute and jurisprudence.[1] The Ninth Circuit thereafter denied a certificate of appealability on August 30, 2013, under No. 13-16232 in that court.

On or about September 13, 2016, petitioner mailed the original petition in this matter to the Clerk for filing.[2]

No intervening amended or corrected judgment of conviction has been filed in the state district court in No. C268406 at any time since the March 14, 2012, judgment of conviction.

---

[1]No. 2:13-cv-00716, ECF No. 5, at 2.

[2]The show-cause order summarizes additional intervening state and federal procedural history. See ECF No. 10, at 4-5.

APP. 008

Review of the Ninth Circuit's online docket records reflects that petitioner has not obtained authorization to pursue a second or successive petition pursuant to 28 U.S.C. § 2244(b)(3)(A).[3]

Discussion

Under 28 U.S.C. § 2244(b)(3), before a second or successive petition can be filed in the federal district court, the petitioner must move in the court of appeals for an order authorizing the district court to consider the petition. A federal district court does not have jurisdiction to entertain a successive petition absent such permission. *E.g., Burton v. Stewart*, 549 U.S. 147, 149 & 152-53 (2007).

In the present petition, petitioner seeks to challenge the same judgment of conviction that he previously challenged in part in No. 2:13-cv-00716. The present petition constitutes a second or successive petition because that prior petition was dismissed on the merits. *See, e.g., Henderson v. Lampert*, 396 F.3d 1049, 1052-53 (9th Cir. 2005).

The present petition is no less successive because claims in the present petition were not exhausted when petitioner filed his first petition and the claims thus would have been premature at that time. As the Supreme Court stated in *Burton*:

> . . . . There is no basis in our cases for supposing . . . that a petitioner with unexhausted claims who . . . elects to proceed to adjudication of his exhausted claims . . . may later assert that a subsequent petition is not "second or successive" precisely because his new claims were unexhausted at the time he filed his first petition. This reasoning conflicts with both [*Rose v. Lundy*, 455 U.S. 509, 102 S.Ct. 1198, 71 L.Ed.2d 379 (1982)] and § 2244(b) and would allow prisoners to file separate habeas petitions in the not uncommon situation where a conviction is upheld but a sentence is reversed. Such a result would be inconsistent with both the exhaustion requirement, with its purpose of

---

[3]Petitioner asserts in response to petition form inquiries in his original and amended petitions that he has obtained such permission. However, no application for such authorization was filed in the Court of Appeals. The Ninth Circuit's February 17, 2016, order in No. 15-17263 denying a certificate of appealability as to this Court's No. 2:15-cv-00184 reflected only that the dismissal of *that* action without prejudice did not preclude a later action. The February 17, 2016, order: (a) did not address any issues following upon the denial of Anderson's first federal habeas petition in No. 13-cv-00716 on the merits; and (b) in all events did not constitute the grant of an application for authorization to file a second or successive petition under § 2244(b)(3)(A).

Petitioner further indicates in response to petition form inquiries that he filed a prior habeas petition under "cv-01607." In 2:12-cv-01607-MMD-VCF, Anderson filed a civil rights action under 42 U.S.C. § 1983 seeking to challenge his conviction and sentence. The Court dismissed that action without prejudice because, *inter alia*, petitioner's claims were not cognizable under § 1983. Petitioner's untimely appeal was dismissed by the Court of Appeals for lack of jurisdiction. The present petition is successive not because of the proceedings in the civil rights action in No. 2:12-cv-01607 but instead because of the dismissal of the prior federal habeas petition in No. 2:13-cv-00716 on the merits.

APP. 009

> reducing "piecemeal litigation," *Duncan v. Walker*, 533 U.S. 167, 180, 121 S.Ct. 2120, 150 L.Ed.2d 251 (2001), and AEDPA, with its goal of "streamlining federal habeas proceedings," *Rhines v. Weber*, 544 U.S. 269, 277, 125 S.Ct. 1528, 161 L.Ed.2d 440 (2005).

549 U.S. at 154.

Petitioner elected to proceed to federal court in No. 2:13-cv-00716 despite the fact that – at the time that he filed his first federal petition – he then had an appeal pending in the Supreme Court of Nevada from the denial of, *inter alia*, his claim that he had been denied a direct appeal due to ineffective assistance of counsel.[4] It is this election – petitioner's decision to not wait for the outcome of then-pending state proceedings – that has created the piecemeal litigation now before this Court that the successive petition rule is intended to preclude. The situation presented is no different from any other situation where a habeas petitioner with an exhausted claim unilaterally elects to proceed to federal court despite the fact that additional state court proceedings either then are pending or thereafter will be needed to exhaust additional claims. As noted in the procedural recital, no state or federal procedural requirement prevented petitioner from waiting for the conclusion of all state proceedings and then presenting all of his claims for relief at one time in a single federal habeas petition. Under controlling Supreme Court precedent, the fact that the present federal petition challenges the same judgment of conviction as the prior petition – with no intervening judgment – leads to the conclusion that the present petition constitutes a successive petition. *E.g.*, *Burton*, 549 U.S. at 155-57. The Court therefore lacks jurisdiction over the petition. 549 U.S. at 149, 152-53 & 157.

Petitioner's show-cause response does not lead to a contrary conclusion.

Petitioner urges that the amended petition should not be considered to be successive because the Court ordered that the original petition in this action be amended on October 11, 2016. See ECF No. 3. The filing of an amended petition in response to an initial screening order has nothing to do with the petition in this matter being successive. The petition has been successive from the outset of this action because it is successive to the petition in No. 2:13-cv-00716 that was denied on the merits.

---

[4]Prior to the filing of No. 2:13-cv-00716, petitioner had separately exhausted his federal constitutional claim challenging the denial of further presentence credit in the judgment, through to the Supreme Court of Nevada. See ECF No. 10, at 2-3 & n. 5.

APP. 010

Petitioner further urges that the petition should not be dismissed as successive because counsel must be appointed. He maintains that appointment of counsel is required unless he waives the appointment. Whether a petition is successive is not contingent upon whether or not counsel is appointed. Moreover, as the Court previously noted in this action, there is no Sixth Amendment right to counsel in a federal habeas matter. There thus is no requirement that counsel must be appointed if the petitioner does not waive counsel. The Court has found twice that the interests of justice do not require the appointment of counsel herein. See ECF No. 3, at 1-2; ECF No. 10, at 8. The Court again finds, for a third time, that the interests of justice do not require the appointment of counsel.

Petitioner next contends that he is actually innocent of the two counts of child abuse and neglect with substantial mental injury because he maintained during the plea colloquy that he only disciplined the children. He further refers to recantation testimony.

Petitioner entered a guilty plea, not an *Alford* plea. During the plea colloquy, the following exchanged occurred:

> THE COURT: What did you do, sir, between October of 1999, the 1st day of October of that year, and the 31st of August of 2009 that causes you to enter a plea of guilty to these two charges?
>
> THE DEFENDANT: I disciplined my children.
>
> THE COURT: Well, sir, disciplining your children is not a crime. It says here as to Count 1 that you –
>
> MR. ODGERS: I think what he's trying to say to the Court is that in his mind what he was doing was disciplining his children. The State and CPS have learned that's not the appropriate way.
>
> THE COURT: Well, we'll go into that at sentencing. It says here, listen carefully, that you hit or punched in the chest, or hit the individuals with a belt, or threw them to the ground and kicked and punched the body of [A.A.], and/or [Z.A.] resulting in substantial mental injuries.
>
> Did you do that, sir?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: As to Count 2, is it [C.P.]? Who is that?
>
> THE DEFENDANT: My stepdaughter.
>
> THE COURT: And [K.S.]?

APP. 011

> THE DEFENDANT: Stepdaughter.
>
> THE COURT: It says here you touched one or more or both of these girls in a manner that they objected to, and it resulted in substantial mental injury to these girls. Did that occur, sir?
>
> THE DEFENDANT: Yes, sir.

No. 2:15-cv-00184, ECF No. 18, Ex. 8, at electronic docketing pages 8-10.

Regardless of how petitioner may characterize his actions in his own mind, the facts to which he admitted during the plea colloquy establish guilt of child abuse and neglect with substantial mental injury.

To the further extent that petitioner relies upon recantation testimony, the state district court heard the recantation testimony and did not find it credible. See No. 2:15-cv-00184, ECF No. 18, Ex. 15, at electronic docketing pages 5-12. Moreover, the state district court heard the recantation testimony and made this credibility determination in February 2012, well prior to petitioner's first federal habeas petition. See No. 2:15-cv-00184, ECF No. 18, Exhs. 14 (contains two transcripts) & 15.

It thus would appear to be unlikely that petitioner can establish actual innocence based upon a newly-discovered factual predicate satisfying the applicable standard in 28 U.S.C. § 2244(b)(2)(B).[5] In all events, petitioner would have to make a *prima facie* showing in that regard in the first instance

---

[5]Section 2244(b)(2)(B) provides:

> (2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless –
>
> . . . . .
>
> (B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of reasonable diligence; and
>
> (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

to the court of appeals in an application filed in that court for permission to file a second or successive petition. *See* 28 U.S.C. § 2244(b)(3)(C). This Court does not have jurisdiction to entertain a successive petition unless petitioner obtains permission to pursue the successive petition from the court of appeals.

Petitioner's extensive argument in the show-cause response on the merits of his underlying claims – including his allegations that the state court judges engaged in treason by violating their oaths of office – further does not establish that the current petition is not successive.

Finally, petitioner maintains that he has not been provided a sufficient increase in his prison legal copy credit limit. ECF No. 13, at 1. The extensive materials that petitioner copied with the recently authorized increase were not pertinent to the issue of whether the current petition is a successive petition. See ECF No. 13. He has not identified any specific relevant exhibits that would establish that the petition is not successive that he has been unable to copy and present to the Court.[6]

IT THEREFORE IS ORDERED that this action shall be DISMISSED without prejudice for lack of jurisdiction as a successive petition.

IT FURTHER IS ORDERED, pursuant to Rule 4 of the Rules Governing Section 2254 Cases, that the Clerk of Court shall make informal electronic service upon respondents by adding Nevada Attorney General Adam P. Laxalt as counsel for respondents and directing a notice of electronic filing of this order to his office, that the Clerk shall direct regenerated notices of electronic filing of the prior filings herein to the attorney general, and that counsel shall file a notice of appearance within **twenty-one (21) days** of entry of this order. **No other response is required from respondents other than to respond to any orders of a reviewing court.**

IT IS FURTHER ORDERED that a certificate of appealability is DENIED. Jurists of reason would not find the district court's dismissal of the successive petition without prejudice to be debatable or wrong, for the reasons discussed herein.

---

[6]The show-cause order directed petitioner only to show cause why the petition should not be dismissed as successive. The order did not direct petitioner to file a second amended petition, much less one with voluminous exhibits. The instructions for the petition form that were sent previously to petitioner instead state in pertinent part that exhibits should not be submitted with the petition, other than the final state court written decisions regarding the conviction. The Court granted petitioner's request for an increase in his copy credit limit in connection with a response to the show-cause order, not to file unnecessary exhibits with a second amended petition.

APP. 013

The Clerk further shall SEND petitioner a copy of ECF Nos. 11-13 with this order.

The Clerk shall enter final judgment accordingly, dismissing this action without prejudice.

DATED: December 16, 2016.

ANDREW P. GORDON
United States District Judge

APP. 014

FILED

AUG 30 2013

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANTHONY K. ANDERSON, Petitioner - Appellant, v. BRIAN WILLIAMS and ATTORNEY GENERAL OF THE STATE OF NEVADA, Respondents - Appellees.	No. 13-16232 D.C. No. 2:13-cv-00716-APG-VCF District of Nevada, Las Vegas ORDER

Before: CANBY and BERZON, Circuit Judges.

Appellant's opening brief, received on July 22, 2013, is construed as a request for a certificate of appealability. So construed, the request is denied. *See* 28 U.S.C. § 2253(c)(2). All pending motions, if any, are denied as moot.

APP. 015

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANTHONY K. ANDERSON,

Petitioner,

vs.

BRIAN WILLIAMS, et al.,

Respondents.

Case No. 2:13-cv-00716-APG-VCF

ORDER

Petitioner, who is a prisoner in the custody of the Nevada Department of Corrections, has submitted an application to proceed in forma pauperis (#1) and a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court finds that petitioner is unable to pay the filing fee. The court has reviewed the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. The court will deny the petition because it lacks merit on its face.

In the Eighth Judicial District Court of the State of Nevada, case C-10-268406-1, petitioner was convicted pursuant to a plea agreement of two counts of child abuse and neglect with substantial bodily harm.[1] Petitioner does not present any claims regarding the validity of that judgment of conviction. Rather, he is challenging the denial of pre-sentence credits for time served. The state district court did not give petitioner any credits because he was on house arrest or residential confinement, and not in jail.

[1] https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=8686118 (last visited May 15, 2013).

This court is unable to give petitioner any relief. Federal habeas corpus relief is available to a petitioner in custody pursuant to a state-court judgment of conviction only if that custody violates the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a). "A federal court may not issue the writ on the basis of a perceived error of state law." Pulley v. Harris, 465 U.S. 37, 41 (1984). "The origin of the modern concept of pre-conviction jail time credit upon the term of the ultimate sentence of imprisonment is of legislative grace and not a constitutional guarantee." Gray v. Warden of Montana State Prison, State of Mont., 523 F.2d 989, 990 (9th Cir. 1975).

Petitioner might be able to receive federal habeas corpus relief if state law clearly creates a liberty interest in credit for time served. Hicks v. Oklahoma, 447 U.S. 343, 346 (1979). Nevada's pre-sentence credit statute states, in relevant part:

> [W]henever a sentence of imprisonment in the county jail or state prison is imposed, the court may order that credit be allowed against the duration of the sentence, including any minimum term thereof prescribed by law, for the amount of time which the defendant has actually spent in confinement before conviction, unless the defendant's confinement was pursuant to a judgment of conviction for another offense.

Nev. Rev. Stat. § 175.055(1). The statute uses discretionary terms, but the Nevada Supreme Court has held that the purpose of the statute is to ensure that all time served is credited toward the defendant's ultimate sentence. State v. Second Judicial Dist. Court (Jackson), 116 P.3d 834, 836 (Nev. 2005). However, in the same decision the Nevada Supreme Court held that the statute does not allow pre-sentence credits for time spent on house arrest or residential confinement. Id. at 837. This court is bound by the Nevada Supreme Court's interpretation of Nevada law. Bains v. Cambra, 204 F.3d 964, 972 (9th Cir. 2000). Consequently, even if Nevada has created a constitutionally protected liberty interest in credit for time served, that liberty interest does not extend to time spent on house arrest. The lack of pre-sentence credit does not violate the Constitution, laws, or treaties of the United States, and this court cannot grant petitioner any relief.

Reasonable jurists would not find this court's conclusion to be debatable or wrong. Petitioner's claim for relief simply has no basis in the law. The court will not issue a certificate of appealability.

APP. 017

Petitioner has submitted a motion for appointment of counsel (#2), a motion for evidentiary hearing (#3), and a motion for pre-sentence credits (#4). The court denies these motions because the court is denying the petition.

IT IS THEREFORE ORDERED that the application to proceed in forma pauperis (#1) is **GRANTED**. Petitioner need not pay the filing fee of five dollars ($5.00).

IT IS FURTHER ORDERED that the clerk of the court shall file the petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

IT IS FURTHER ORDERED that the motion for appointment of counsel (#2) is **DENIED**.

IT IS FURTHER ORDERED that the motion for evidentiary hearing (#3) is **DENIED**.

IT IS FURTHER ORDERED that the motion for pre-sentence credits (#4) is **DENIED**.

IT IS FURTHER ORDERED that the petition for a writ of habeas corpus is **DENIED**. The clerk of the court shall enter judgment accordingly.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

DATED: May 15, 2013.

ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE

APP. 018

ORIGINAL

FILED
MAR 14 2012
CLERK OF COURT

JOCP

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ANTHONY KENNETH ANDERSON
#1473895

Defendant.

CASE NO. C268406-1

DEPT. NO. XIV

JUDGMENT OF CONVICTION

(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crimes of COUNT 1 – CHILD ABUSE & NEGLECT WITH SUBSTANTIAL MENTAL INJURY (Category B Felony), in violation of NRS 200.508, 0.060; and COUNT 2 – CHILD ABUSE & NEGLECT WITH SUBSTANTIAL MENTAL INJURY (Category B Felony), in violation of NRS 200.508, 0.060; thereafter, on the 29th day of February, 2012, the Defendant was present in court for sentencing with his counsel, BRET WHIPPLE, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the $25.00 Administrative Assessment, and $150.00 DNA Analysis Fee including testing to determine genetic markers, the Defendant is sentenced to the

C-10-268406-1
JOC
Judgment of Conviction
1797826

Nevada Department of Corrections (NDC) as follows: as to COUNT 1 - to a MAXIMUM of ONE HUNDRED FORTY-FOUR (144) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS; and as to COUNT 2 – to a MAXIMUM of ONE HUNDRED FORTY-FOUR (144) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, COUNT 2 to run CONSECUTIVE to COUNT 1; with FIVE (5) DAYS Credit for Time Served.

DATED this MAR 12 2012 day of March, 2012

DONALD MOSLEY
DISTRICT JUDGE